

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Accelerating Wireless Broadband Deployment by)	WT Docket No. 17-79
Removing Barriers to Infrastructure Investment)	
)	
Revising the Historic Preservation Review Process)	WT Docket No. 15-180
for Wireless Facility Deployments)	

COMMENTS OF THE McLEAN CITIZENS ASSOCIATION

The McLean Citizens Association (hereinafter “MCA”), on behalf of its members, hereby provides its comments to the Federal Communications Commission (“Commission” or “FCC”) in the above-captioned matters.¹ The MCA is a Virginia nonstock, nonprofit corporation (501(c)(4)).

The MCA, founded in 1914, represents the interests of more than 75,000 people residing in northern Fairfax County, Virginia through its 40 member Board of Directors and active committees, including its Planning & Zoning Committee. We act as an unofficial town council for the residents of the McLean area, which has no separate governmental structure of its own, giving residents a forum in which they can discuss ways to resolve community problems and countywide issues affecting the area. The MCA also advocates before federal, state and local governments on issues of concern to the McLean community.

Issues addressed by the MCA and its Planning & Zoning Committee include land use applications filed with the County of Fairfax (“Fairfax County”) and located within the MCA

¹ *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment, and Revising the Historic Preservation Review Process for Wireless Facility Deployments*, Notice of

membership area.² This includes all applications for telecommunications facilities, which are generally reviewed under Section 15.2-2232 of the Code of Virginia.³

The McLean Planning District which includes much of Tysons,⁴ is home to many key government agencies, including the Central Intelligence Agency, the Liberty Crossing Intelligence Campus and the Federal Highway Administration's Turner-Fairbank Highway Research Center; multiple Fortune 500 companies, including Freddie Mac, Capital One Financial, Hilton Worldwide and Booz Allen Hamilton Holdings; other major companies, including Mars, Inc., Iridium Communications, Intelsat, United Bank f/k/a Cardinal Bank, Gannett/USA Today, and Mitre Corporation; and hundreds of small-to-mid-size companies and associations. Equally important are the thousands of people who call McLean home.

Proposed Rulemaking and Notice of Inquiry, WT Docket Nos. 17-79 and 15-180, FCC 17-38 (rel. April 21, 2017) ("*17-79 Notice*").

² The MCA's membership area is co-terminus with Fairfax County's McLean Planning District. The County describes this area as:

The McLean Planning District encompasses approximately 19,400 acres, or about seven percent of the county. The planning district is located in the northeast portion of Fairfax County, and is bounded on the north by the Potomac River, on the southeast by Arlington County and the City of Falls Church, on the southwest by Leesburg Pike (Route 7) and the Dulles Airport Access Road and Dulles Toll Road (DAAR, Route 267), and on the west by Difficult Run, Leesburg Pike, Towlston Road, and Old Dominion Drive (see Figure 1). The planning district contains the McLean Community Business Center (CBC), the West Falls Church Transit Station Area (TSA), and a portion of the Tysons Urban Center. Plan recommendations for the Tysons Urban Center are included in the Area II volume of the Comprehensive Plan, Tysons Urban Center. Fairfax County, Comprehensive Plan, 2013 Edition, AREA II, McLean Planning District, Amended through 3-14-2017, at 1. Available online at <http://www.fairfaxcounty.gov/dpz/comprehensiveplan/area2/mclean.pdf>

³ Virginia Code Section 15.2-2232 is available online at <http://law.lis.virginia.gov/vacode/title15.2/chapter22/section15.2-2232/>. Fairfax County's "2232 review process" is explained at http://www.fairfaxcounty.gov/dpz/2232/learn_about_2232.htm. The Commonwealth of Virginia has amended its land user laws to streamline local government (and Virginia Department of Transportation) review of certain wireless facility installations. 2017 Virginia Acts, Ch. 835 (effective July 1, 2017).

⁴ Tysons, Virginia is a 2100 acre community in Fairfax County that is being transformed from a successful suburban office park to a mixed used urban center that will become home to 100,000 residents and 200,000 workers. See generally, <http://www.fairfaxcounty.gov/tysons/>.

As such, the MCA understands the need for cutting-edge telecommunications services and networks, including further build-outs of 4G technology and the arrival of 5G technology. Both McLean-area residents and businesses will demand access to robust 5G services provided by state-of-the-art wireless networks. Accordingly, the MCA supports the effort of the Commission to ensure timely deployment of 21st Century wireless networks, including small cells, while protecting legitimate state and local land use authority, as well as the interests of local residents.

Local zoning has long been recognized by the courts as a fundamental part of the state police power.⁵ A land use regulation lies within the police power if it is reasonably related to the public welfare.⁶ While Section 332(c)(7) of the Communications Act of 1934, as amended (“34 Act”), 47 U.S.C. § 332(c)(7), acts as a brake on unreasonable application of state and local zoning and right-of-way authority with respect to the siting of wireless network facilities, it does not and cannot preempt state and local zoning power. Rather, the statute preempts only those provisions of local zoning laws that actually conflict with the statute.⁷

Since Congress did not preempt local zoning, this process must be allowed to work so long as it does not create unreasonable barriers to the deployment of wireless facilities. Comprehensive Plans and zoning ordinances are still vital to the public interest and well-being. It is important for cell towers and antennas to be erected in a manner that fits with the site at hand. What fits with a dense mixed-use community will probably not fit with a neighborhood of single family homes. And it is reasonable to require an applicant for a tower or antenna to

⁵ *Berman v. Parker*, 348 U.S. 26 (1954).

⁶ *Associated Home Builders, Inc. v. City of Livermore*, 135 Cal.Rptr. 41 (Calif. 1976).

⁷ See, e.g., *Omnipoint Commc'ns, Inc. v. City of Huntington Beach*, 738 F.3d 192 (9th Cir. 2013); *Bell Atl. Mobile of Mass. Corp. v. City of Cambridge*, 30 F.Supp.3d 81 (D. Mass. 2014); *Virginia Metronet v. Bd. of Supervisors*, 984 F.Supp. 966 (E.D. Va. 1998).

present alternative locations and designs for facilities. Similarly, timely public and county staff review of those proposals does not necessarily create undue burdens on an applicant. As explained below, when applicants take these steps to conform a tower or antenna array to the applicable Comprehensive Plan, zoning ordinance and the existing character of a neighborhood, quite often the result is common support for the facility by the applicant, local government and affected community.

Service providers and infrastructure companies should continue to work with local governments, local businesses and residents to design and to deploy facilities in a manner that makes them less obtrusive while still providing adequate coverage. With regard to wireless networks facilities, “attractive” is not the enemy of “robust,” and equipment installations to deliver 5G services need not be unattractive.

The MCA supports co-location of various companies’ equipment as an operative policy whenever feasible. Similarly, the FCC should encourage the Industry to establish and follow Best Practices. There need not be ongoing “wars” between wireless companies and other facilities operators on one hand and local residents and their elected officials on the other hand.

The idea that community review is always a barrier to the deployment of wireless infrastructure is simply false. As noted above, the MCA normally reviews every land use case within its membership area requiring some type of approval from Fairfax County and has done so for many years.⁸ This includes Fairfax County approval for wireless facilities, including wireless transmission towers.

⁸ MCA committee members include engineers, architects, scientists, economists, professional planners, federal government employees and attorneys, among others. Its work is highly regarded by Fairfax County.

From December 2006 through January 2017, the MCA has fully reviewed eight such requests and provided comments to the applicants. After such review, which includes face-to-face meetings with applicants, the MCA's Board of Directors has adopted resolutions on each request. In seven instances,⁹ the MCA adopted resolutions in support of the wireless facilities.¹⁰ Generally, the MCA would also provide written and/or verbal testimony to Fairfax County planning authorities in favor of such applications. Only in one instance did the MCA pass a resolution opposing a wireless application.¹¹

The keys to this successful process has been the commitment of both telecom companies and the MCA to work together to reach agreement on zoning requests for wireless facilities. Fairfax County encourages this cooperation. Nationwide rules should not preclude working together in a manner that has produced acceptable results for all.

The MCA does not oppose "shot clocks" per se. Land use decisions need to be made on a timely basis. However, the applicant often controls much of the timing by its provision or non-provision of complete and accurate information about the project to the affected government agency and to the public. Fairfax County encourages applicants to meet with the affected

⁹ The Commission has requested the public "provide facts and submit evidence" on the various issues raised in this proceeding. *17-79 Notice*, at ¶ 6. The MCA submits the following cases supported by the MCA. Cingular Wireless at Colonial Farm Road, McLean (FS-D06-80); NewPath Networks Distributed Antenna System, McLean (2232-D07-13); NewPath Networks Distributed Antenna System, McLean, application for additional facilities (2232-D8-08); Verizon Wireless Antenna, McLean (FS-D08-111); T-Mobile Wireless Antenna, McLean (FS-D08-039); and Clearwire Other Mounted Antennas, McLean, two applications (FS-D09-135 and FS-D09-136). The alpha-numeric listings are the zoning case references used by Fairfax County to identify specific applications.

¹⁰ The keys to this successful community engagement include the applicant reaching out to neighbors early in the process; providing appropriate information about the application, including alternatives considered and rejected; responding quickly and completely to community questions and concerns; and concomitant cooperative attitude by the MCA and its members.

¹¹ Verizon Wireless Installation at 1451 Chain Bridge Road, McLean (Special Exception 2232-D-16-37). One of the major reasons for the MCA's opposition to Verizon Wireless' Special Exception request was Verizon's refusal to provide information on alternative locations in a County-designated business district

communities in advance of making any formal filings. As noted above, this process generally results in the resolution of most issues before they are raised formally in the land use decision-making process, such that, after staff review, County approval is often pro forma.

To encourage informal cooperation, the Commission should adopt a rule that stops the clock when an applicant has not provided all reasonably requested information, much like the Commission stops the clock in merger reviews when applicants have not provided all the needed information. To do otherwise would encourage applicants to withhold information to game the shot clock. Likewise the shot clock should not begin until the applicant has made a filing with the zoning authority that meets all specified requirements, including the submission of all necessary information and data.

Similarly, there is no reason for the Commission to prescribe new “shot clock” review periods for different types of facilities or for facilities located in different types of areas. Such a rule would add even more complexity to the land use review process and seems to fly in the face of the FCC’s long history of loosening regulations in favor of market solutions. The Commission just does not have the expertise to decide what type of review process and associated time limits would work in the hundreds of local land use agencies throughout the United States.

The Commission asks about the appropriateness of the holding of the “Second, Third, and Ninth Circuits ... that an applicant must show only that its proposed facilities are the ‘least intrusive means’ for filling a coverage gap in light of the aesthetic or other values that the local authority seeks to serve.”¹² The MCA would support use of this standard as it reflects what the

Revitalization Area with an ongoing and partially implemented plan to underground utility lines and, subsequently, to remove utility poles along the major thoroughfares of the business district.

¹² *17-79 Notice*, at ¶ 91.

MCA presently seeks from applicants—what is the least intrusive deployment that provides adequate service at a reasonable cost to the applicant? Again, in its experience reviewing wireless 2232 applications and when presented with alternatives, the MCA has generally supported proposals when the applicant shows its preferred deployment is the least intrusive location.¹³

A fair reading of the *17-79 Notice* and the MCA’s years of experience leads us to conclude good zoning decisions that permit timely and cost-efficient deployment of wireless facilities in the least intrusive manner require cooperation among the parties and that the proposed rules push parties to cooperate. The MCA has shown examples of what can occur with such cooperation—community support for the proposed installation of wireless facilities. We now explain what happens when an applicant does not wish to cooperate, such as with a recent installation of Verizon Wireless equipment.

As noted above, the MCA has opposed one wireless 2232 application in the last eleven years. In that case, Verizon Wireless applied to Fairfax County “to replace an existing 39-foot telephone pole currently owned by Dominion Virginia at 1451 Chain Bridge Road, [McLean, VA] ...with a new telephone pole of at least 52 feet that would also have a Verizon cellphone antenna enclosure on top of the pole.”¹⁴ The MCA raised concerns that the installation is inconsistent with the County’s long-standing efforts to underground utilities in the McLean business district and Revitalization Area. In return, Verizon simply refused to provide “sufficient technical data or to otherwise adequately explain why alternate locations for its

¹³ As noted above, the Virginia General Assembly has streamlined the review of certain wireless facility applications effective July 1, 2017. *See* n.3 *supra*.

¹⁴ McLean Citizens Association Resolution Verizon Wireless Installation at 1451 Chain Bridge Road (Special Exception 2232-D-16-37) January 4, 2017, <http://mcleancitizens.org/pz/Resolutions/Verizon%20Wireless%20Installation%201451%20Chain%20Bridge%20Road.pdf>. The actual pole height is 60 feet.

cellphone antenna would not provide equivalent service and coverage.”¹⁵ Verizon simply did not provide a level of cooperation hoped for by the *17-79 Notice* or the residents of McLean.

Section 332(c)(7) of the 34 Act does not give an applicant the right to have whatever it wants, wherever it wants and whenever it wants without regard to the local zoning rules and community interests. There must be room for local government to consider other public goals, such as revitalizing business districts, in part, through undergrounding utilities, when considering applications to locate wireless facilities. Reasonable people can find solutions that serve both needs. Local government must retain sufficient authority to balance competing needs.

Finally, the MCA supports the retention of the general rule that local zoning can consider the aesthetic effect of proposed wireless infrastructure so long as it is not based on “‘generalized concerns’ about aesthetics but is supported by ‘substantial evidence contained in a written record’ about the impact of specific facilities on particular geographic areas or communities.”¹⁶ As noted above, the MCA has generally supported wireless infrastructure 2232 applications whenever the applicant has complied with the Comprehensive Plan and zoning ordinance, has addressed reasonable community concerns and provided information on alternative sites and deployments.

For the reasons set forth above, the MCA urges the Commission to consider these comments. Specifically, we urge the Commission to preserve reasonable zoning review processes that protect community interests (such as obtaining early input from affected residents and businesses, preserving the character of neighborhoods, making facility installations less obtrusive and enhancing business district revitalization projects), while not unduly burdening

¹⁵ *Id.*

¹⁶ *17-79 Notice*, at ¶ 92 (footnotes omitted).

applicants with excessive costs or unreasonable delays. The processes used in Fairfax County incorporate this appropriate balance and should be allowed to continue.

Respectfully submitted,

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